

AMENDED IN ASSEMBLY JULY 24, 2003

AMENDED IN ASSEMBLY JULY 15, 2003

AMENDED IN SENATE MAY 8, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 969

Introduced by Senator Bowen

(Principal coauthor: Assembly Member Corbett)

February 21, 2003

An act to amend Sections 4999.2 and 4999.7 of the Business and Professions Code, and to amend Section 1348.8 of the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 969, as amended, Bowen. Telephone medical advice services.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a violation of the act's provisions a crime. Under the act, a health care service plan that provides, operates, or contracts for telephone medical advice services for its enrollees and subscribers is required to ensure those services comply with certain standards, including that staff providing telephone medical advice are licensed, certified, or registered professionals. Existing law also provides for the regulation and certification of telephone medical advice services, and requires the staff of those advice services to be appropriately licensed, certified, or registered in various healing arts professions.

This bill would ~~additionally include licensed clinical social workers as a health care service professionals, for purposes of these provisions.~~ The bill would require a health care service plan to ensure that staff handling enrollee or subscriber calls, but who are not licensed, certified, or registered in various healing arts professions, do not provide telephone medical advice. The bill would also require a health care service plan and a telephone medical advice service to ensure that no staff member uses a title or designation that would cause a reasonable person to believe the staff member is licensed, certified, or registered as a specified type of health care professional unless the staff member meets those requirements. The bill would enact other related provisions.

Because the bill would add requirements concerning the operation of a health care service plan, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4999.2 of the Business and Professions
2 Code is amended to read:
3 4999.2. (a) In order to obtain and maintain a registration,
4 in-state or out-of-state telephone medical advice services shall
5 comply with the requirements established by the department.
6 Those requirements shall include, but shall not be limited to, all of
7 the following:
8 (1) (A) Ensuring that all staff who provide medical advice
9 services are appropriately licensed, certified, or registered as a
10 physician and surgeon pursuant to Chapter 5 (commencing with
11 Section 2000) or the Osteopathic Initiative Act, as a dentist
12 pursuant to Chapter 4 (commencing with Section 1600), as a
13 dental hygienist pursuant to ~~Section 1758 et seq.~~ Sections 1760 to
14 1775, inclusive, as a psychologist pursuant to Chapter 6.6



(commencing with Section 2900), as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), *as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4990)*, as an optometrist pursuant to Chapter 7 (commencing with Section 3000), as a chiropractor pursuant to the Chiropractic Initiative Act, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided in paragraph (2).

(B) Ensuring that all staff who provide telephone medical advice services from an out-of-state location are health care professionals as identified in subparagraph (A) that are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and operating consistent with the laws governing their respective scopes of practice.

(2) Ensuring that all registered nurses providing telephone medical advice services to both in-state and out-of-state business entities registered pursuant to this chapter shall be licensed pursuant to Chapter 6 (commencing with Section 2700).

(3) Ensuring that the telephone medical advice provided is consistent with good professional practice.

(4) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years.

(5) Ensuring that no staff member uses a title or designation when speaking to an enrollee or subscriber that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered professional described in subparagraph (A) of paragraph (1), unless the staff member is a licensed, certified, or registered professional.

(6) Complying with all directions and requests for information made by the department.

(b) To the extent permitted by Article VII of the California Constitution, the department may contract with a private nonprofit accrediting agency to evaluate the qualifications of applicants for registration pursuant to this chapter, and to make recommendations to the department.

SEC. 2. Section 4999.7 of the Business and Professions Code is amended to read:

1 4999.7. (a) Nothing in this section shall limit, preclude, or
2 otherwise interfere with the practices of other persons licensed or
3 otherwise authorized to practice, under any other provision of this
4 division, telephone medical advice services consistent with the
5 laws governing their respective scopes of practice, or licensed
6 under the Osteopathic Initiative Act or the Chiropractic Initiative
7 Act and operating consistent with the laws governing their
8 respective scopes of practice.

9 (b) For the purposes of this chapter, “telephone medical
10 advice” means a telephonic communication between a patient and
11 a health care professional, wherein the health care professional’s
12 primary function is to provide to the patient a telephonic response
13 to the patient’s questions regarding his or her or a family member’s
14 medical care or treatment. “Telephone medical advice” includes
15 assessment, evaluation, or advice provided to patients or their
16 family members.

17 (c) For the purposes of this chapter, “health care professional”
18 is a staff person described in Section 4999.2 who provides medical
19 advice services and is appropriately licensed, certified, or
20 registered as a registered nurse pursuant to Chapter 6
21 (commencing with Section 2700), a physician and surgeon
22 pursuant to Chapter 5 (commencing with Section 2000) or the
23 Osteopathic Initiative Act, a dentist pursuant to Chapter 4
24 (commencing with Section 1600), a dental hygienist pursuant to
25 ~~Section 1758 et seq.~~ *Sections 1760 to 1775, inclusive*, a
26 psychologist pursuant to Chapter 6.6 (commencing with Section
27 2900), a marriage and family therapist pursuant to Chapter 13
28 (commencing with Section 4980), *as a licensed clinical social*
29 *worker pursuant to Chapter 14 (commencing with Section 4990)*,
30 an optometrist pursuant to Chapter 7 (commencing with Section
31 3000), a chiropractor pursuant to the Chiropractic Initiative Act,
32 and who is operating consistent with the laws governing his or her
33 respective scopes of practice in the state in which he or she
34 provides telephone medical advice services.

35 SEC. 3. Section 1348.8 of the Health and Safety Code is
36 amended to read:

37 1348.8. (a) Every health care service plan that provides,
38 operates, or contracts for, telephone medical advice services to its
39 enrollees and subscribers shall do all of the following:

(1) Ensure that the in-state or out-of-state telephone medical advice service is registered pursuant to Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code.

(2) Ensure that the staff providing telephone medical advice services for the in-state or out-of-state telephone medical advice service are licensed as follows:

(A) For full service health care service plans, the staff hold a valid California license as a registered nurse or a valid license in the state within which they provide telephone medical advice services as a physician and surgeon or physician assistant and are operating in compliance with the laws governing their respective scopes of practice.

(B) (i) For specialized health care service plans providing, operating, or contracting with a telephone medical advice service in California, the staff shall be appropriately licensed, registered, or certified as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, as a dentist pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code, as a dental hygienist pursuant to Article 7 (commencing with Section 1740) of Chapter 4 of Division 2 of the Business and Professions Code, as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code, as an optometrist pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, or as a chiropractor pursuant to the Chiropractic Initiative Act and operating in compliance with the laws governing their respective scopes of practice.

(ii) For specialized health care service plans providing, operating, or contracting with an out-of-state telephone medical advice service, the staff shall be health care professionals, as identified in clause (i) that are licensed, registered, or certified in



1 the state within which they are providing the telephone medical
2 advice services and operating in compliance with the laws
3 governing their respective scopes of practice. All registered nurses
4 providing telephone medical advice services to both in-state and
5 out-of-state business entities registered pursuant to this chapter
6 shall be licensed pursuant to Chapter 6 (commencing with Section
7 2700) of Division 2 of the Business and Professions Code.

8 (3) Ensure that every full service health care service plan
9 provides for a physician and surgeon who is available on an on-call
10 basis at all times the service is advertised to be available to
11 enrollees and subscribers.

12 (4) Ensure that staff members handling enrollee or subscriber
13 calls, who are not licensed, certified, or registered as required by
14 paragraph (2), do not provide telephone medical advice. Those
15 staff members may ask questions on behalf of a staff member who
16 is licensed, certified, or registered as required by paragraph (2), in
17 order to help ascertain the condition of an enrollee or subscriber
18 so that the enrollee or subscriber can be referred to licensed staff.
19 However, under no circumstances shall those staff members use
20 the answers to those questions in an attempt to assess, evaluate,
21 advise, or make any decision regarding the condition of an enrollee
22 or subscriber, nor shall those staff members provide advice or
23 schedule an appointment based on those answers.

24 (5) Ensure that no staff member uses a title or designation when
25 speaking to an enrollee or subscriber that may cause a reasonable
26 person to believe that the staff member is a licensed, certified, or
27 registered professional described in Section 4999.2 unless the staff
28 member is a licensed, certified, or registered professional.

29 (6) Ensure that the in-state or out-of-state telephone medical
30 advice service designates an agent for service of process in
31 California and files this designation with the director.

32 (7) Requires that the in-state or out-of-state telephone medical
33 advice service makes and maintains records for a period of five
34 years after the telephone medical advice services are provided,
35 including, but not limited to, oral or written transcripts of all
36 medical advice conversations with the health care service plan's
37 enrollees or subscribers in California and copies of all complaints.
38 If the records of telephone medical advice services are kept out of
39 state, the health care service plan shall, upon the request of the



1 director, provide the records to the director within 10 days of the
2 request.

3 (8) Ensures that the telephone medical advice services are
4 provided consistent with good professional practice.

5 (b) The director shall forward to the Department of Consumer
6 Affairs, within 30 days of the end of each calendar quarter, data
7 regarding complaints filed with the department concerning
8 telephone medical advice services.

9 (c) For the purposes of this section, “telephone medical
10 advice” means a telephonic communication between a patient and
11 a health care professional, wherein the health care professional’s
12 primary function is to provide to the patient a telephonic response
13 to the patient’s questions regarding his or her or a family member’s
14 medical care or treatment. “Telephone medical advice” includes
15 assessment, evaluation, or advice provided to patients or their
16 family members.

17 SEC. 4. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

